COURT NO. 2

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 902 of 2001
(Old No. 411/1987)

State of U.P. through
Collector Tehri Garhwal. … Appellant.

Versus

Raghubir Singh & others. … Respondents.

Learned Standing Counsel for the appellant.

Hon. P.C. Verma, J.
Hon. B.S. Verma, J.

This appeal has been preferred under Section 110-D of the motor Vehicles Act, 1939 (***in short the act)*** against the judgment and award dated 25-10-1986, passed in M.A.C. Case No. 16 of 1984, Raghubir Singh and another Vs. U.P.S.R.T.C. and 2 others, by the District Judge/Motor Accident Claims Tribunal **(*in short the Tribunal)***, whereby the Tribunal has awarded sum of Rs,. 5,027.13 as compensation in favour of the claimant-respondent no.2 recoverable from O.P.Nos. 1 and 2, along with interest @ 6% per annum, as mentioned in the impugned order. Aggrieved, the State of U.P.-appellant has come up in appeal to set aside the impugned judgment and order mainly on the ground that the offending truck No. UTC-9889 belonged to P.W.D. Pauri Garhwal and that the motor accident was caused due to rash and negligent driving by the driver of the bus belonging to U.P.S.R.T.C. and that the Tribunal has not properly appreciated the evidence on record.

Brief facts of the case are that on 8.9.1983 at about 1 p.m. between Shivpuri and Byasi on Rishikesh Deoprayag road, a motor accident took place with the result Smt. Kaura Devi **(*the deceased*)** sustained injuries and died due to rash and negligent driving of the UPSRTC bus No. UTF-3705. It is alleged that the deceased was traveling by the said bus. When the said bus No. UTF-3705 and truck No. UTC-9889 belonging to respondent No. 3

and driven by respondent no. 4, Mahavir Singh, tried to come across each other on the road, the driver of the bus due to carelessness on his part could not control the bus, which fell on the bank of river Ganga. It is alleged that the drivers of both the vehicles were responsible for the said accident, with the result the deceased and many others sustained grievous injuries and died, hence the claim petition has been preferred by the son and minor daughter/dependents of the deceased. The Opposite Parties contested the claim petition by filing their written statements on different grounds. The learned Tribunal framed necessary Issues in the case. Ultimately, the Tribunal, after discussing the entire evidence on record, has held on Issue No.1 that the accident took place due to rash and negligent driving of both the vehicles involved in the accident. The Tribunal has also concluded on Issue Nos. 2 and 3 that the petitioner Bimla alone is entitled to get compensation for the death of Smt. Kauri Devi to the tune of Rs. 5,027.13 P. alone along with interest @ 6% per annum. The learned Tribunal has accordingly decreed the claim petition in favour of Km. Bimla as against O.P.Nos 1 and 2 to the extent of 50% each, as mentioned in the impugned order.

We have hard learned Standing Counsel, Sri Bhupender Singh, appearing on behalf of the State-appellant and have carefully gone through the material on record including the impugned judgment and award.

The only submission made before us on behalf of the appellant is that in the present case, the motor accident has occurred due to rash and negligence on the part of the U.P.S.R.T.C. bus no. UTF-3705 belonging to U.P. Roadways (UPSRTC) and there was no negligence or rashness on the part of the driver of P.W.D. Truck No. UTC-9889, therefore, the finding of the learned Tribunal that drivers of both the vehicles involved in the accident were responsible for the motor accident is erroneous and the judgment and order under appeal is liable to be modified. We have

Considered the submissions of the learned Standing Counsel for the State in the light of the material available on record. In the case under appeal the learned Tribunal has framed Issue No.1 to the following effect:

> ***"Whether the accident was occasioned due to rash and negligent driving of the drivers of the two vehicles involved or of anyone of them? If so its effect?***

From a perusal of the record, we find that there is evidence of eye witness, Kailashi Devi, (PW 2), who was traveling by the ill-fated bus. She has given ocular account of the accident. She has stated that at the place of accident, the bus was coming down, while the truck was going upwards. Drivers of both the vehicles did not blow horn. The bus driver in order to save the truck and to give way to the truck turned the downward, but the truck driver made no effort to save the bus with result the front part of the truck collided with the rear part of the bus and due to the impact, the bus rolled down into the *Khudd.* We have perused the evidence of Kailashi Devi in the light of the statements of two witnesses D.W.1 Manmohan Mittal and Mahavir Singh D.W.2, who was driving the truck involved in the accident. The testimony of these two witnesses of the Opposite parties does not appear to be consistent with the pleas taken in the written statement, 21-Kha, of the contesting O.P.-appellant. It also find place to mention here that both the witnesses, viz. Manmohan, D.W.1, and Mahavir Singh, driver, D.W.2, are the employees of the government working in the Public Works Department, therefore, naturally they will support the case of the appellant, whereas on the other hand, the testimony of P.W. 2, Smt. Kailashi Devi, who can be termed as independent witness, has been produced. This witness had sustained injuries in the accident. In out view, she had given ocular account of the accident in a natural way, therefore, her evidence cannot be discarded on the pretext that she is an interested witness. On scrutiny of the evidence available on record on its entirety, we find

That the learned Tribunal has given cogent reasons for holding both the drives of the vehicles involved in the accident. Since the learned Tribunal has already discussed all material aspects in arriving at the conclusion that in the present case, there was contributory negligence on the part of the drivers of both the vehicles, it will be of no use to reiterate the same evidence again, especially because nothing has been pointed out to us by the learned counsel for the appellant, which could be sufficient to hold that the accident in question had occurred due to sole negligence and rashness on the part of driver of the ill-fated bus. Moreover, the learned counsel could not indicate that P.W.2 Kailashi Devi was in any way interested to implicate the driver of the P.W.D. Truck out of grudge or for any extraneous reason, therefore, we have no option but to hold that the findings of the learned Tribunal are based on cogent evidence available on record and that no illegality or infirmity has been committed by the Tribunal. It may also be mentioned here that in the present case, one of the vehicles, namely the truck was climbing upwards, while the other vehicle, i.e. the bus, was going downwards, therefore, it was the duty of both the drivers to the vigilant and careful to avoid the accident, particularly when there has been river Ganga at the bottom of the ravine, therefore, having considered all the facts and circumstances of the case, coupled with the testimony of the witnesses produced by both the parties, we are unable to take a different view in the matter, so as to warrant interference with the findings of the learned Tribunal.

No other point was urged or argued before us in this appeal.

Ultimately, the appeal lacks merit and is dismissed. The judgment and award under appeal is upheld. No order as to costs.

4-11-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**